CRIMINAL APPEAL No.810 OF 2008

Against the Judgment and order dated 5.8.2008 passed by Sri Binay Kumar Singh, Additional Sessions Judge, F.T.C. IIIrd, Sheikhpura in S.T. No.502 of 2006.

1.KAILU YADAV @ RAM SWAROOP YADAV
2.Bhukhan Yadav
3.Doman Yadav ……..…….. Appellants.

Versus

The State of Bihar ----------(Respondents)

For the appellants: Mr. Arvind Kumar, Advocate.

For the State : Mr. S.N.Prasad, A.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

S.P.Singh,J. This appeal is directed against the Judgment and order dated 5.8.2005 passed by Sri Binay Kumar Singh, learned Additional Sessions Judge – cum – F.T.C. No.IIIrd, Sheikhpura in S.T. No.502 of 2006, by which he convicted the appellants under section 323 of the I.P.C., and sentenced the appellants No.1 and 2 to undergo simple imprisonment for three months, whereas appellant no.3, Doman Yadav was sentenced to undergo S.I. for six months.

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2. The informant, Kishori Yadav, P.W. 4 made statement on 5.9.2005 at 8.30 A.M., before Karanday Police Station, alleging therein that while he was at pumping set for irrigating his field, at about 6.30 A.M. one Doman Yadav, Kailu Yadav, Bhukhan Yadav and Adhik Yadav came with lathi and claimed that the Fan fixed with the machine belonged to them on account of which altercation ensued. Appellant no.3 assaulted him on his head with lathi. Other accused persons assaulted him on his legs and hands.

3. After investigation the police submitted chargesheet under sections 323, 307 and 504 of I.P.C. After cognizance the case was committed to the court of Sessions and charge under section 307 of the I.P.C. was framed against appellant no.3 and one under sections 504, 323 and 341 of I.P.C. against other appellants.

4. The prosecution has examined altogether 7 witnesses in its support.

5. P.W.1, Basudeo Paswan in his evidence has admitted that he is making the deposition for the first time regarding the present occurrence. P.W.2, Anandi Yadav has deposed that when he reached the place of occurrence, he saw his brother lying on the ground. P.W.3, Bijo Yadav has been declared hostile. P.W.4 has supported the prosecution case. P.Ws.5 and 6, namely, Sidheshwar Pandey and Chandradeo Rai are the I.O. of this case. P.W.7 is Dr. Jitendra Prasad Singh, who has treated the informant, Kishori Yadav(P.W.4) and found the injuries on his person to be simple in nature.

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6. The case of the appellants is that the doctor in collusion with the informant has prepared a collusive report.

7. The learned counsel for the appellants submits that actually there is no eye witness to the occurrence. The motive of the occurrence has not been proved by prosecution.

8. The trial court on consideration of materials has found the appellants guilty under section 323 of I.P.C.

9. Under the above facts and circumstances of the case I do not find any reason to interfere with the aforesaid conviction of the appellants under section 323 of the I.P.C. and as such the Judgment of the trial

court is upheld. However, this Court in the facts and circumstances of the case is of the view that instead of imposing any sentence a suitable fine would meet the ends of justice. As such I direct that appellant no.1, Kailu Yadav @ Ram Swarup Yadav and appellant no.2, Bhukhan Yadav to pay a fine of Rs.100 each in trial court whereas appellant no.3, Doman Yadav will deposit a fine of Rs.300/- which would be withdrawn by the informant.

9. As such the sentence of imprisonment granted by the learned court below is set aside. In the result the appeal is dismissed with the aforesaid modification in sentence.

(Samarendra Pratap Singh)

Patna High Court,Patna.
The 26th August,2008
Anil Kumar Sinha/N.A.F.R.

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